APPENDIX A

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 25766

LEE ROY LEACH,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Northern District of Mississippi

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(October 17, 1968)

Before GEWIN and BELL, Circuit Judges and BOOTLE, District Judge.

PER CURIAM: Appellant was jointly indicted with James Nathan Thrasher for violating statutes relating to distilled spirits. The first count charged both with a conspiracy. Counts two and seven charged appellant with separate substantive violations. Count three charged appellant and Thrasher jointly with a substantive violation. Counts four, five and six charged Thrasher with substantive violations.

Each defendant filed motions for severance prior to trial and these were overruled. At the close of the government's case a motion for judgment of acquittal was granted as to both defendants on the conspiracy count and as to appellant on Counts three and seven. This left Count two standing against him and Counts three, four, five and six standing against Thrasher. Both defendants renewed their motions for severance and for mistrials. The court granted Thrasher's motion for severance by declaring a mistrial as to him.

The case proceeded against appellant on Count two, possession of non-tax paid liquor. Having been convicted, he now contends that the trial court erred in overruling his motion for severance and for mistrial. He asserts that the evidence adduced against Thrasher prejudiced him under the circumstances. We find no merit in this contention. Whether the court should have granted severance as to appellant was a matter of discretion. *Garcia* v. *United States,* 5 Cir., 1963, 315 F.2d 679. There is no basis for finding an abuse of discretion. Cf. *Schaffer* v. *United States,* 362 U.S. 511 (1960). Here the court was at pains to give appropriate cautionary instructions and we think these were sufficient.

AFFIIRMED.

APPENDIX B

United States Court of Appeals

FOR THE FIFTH CIRCUIT

OCTOBER TERM, 1968

No. 25766

D. C. Docket No. CRE 6798

LEE ROY LEACH,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Northern District of Mississippi

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Before GEWIN and BELL, Circuit Judges
and BOOTLE, District Judge.

Judgment

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Mississippi, and was taken under submission by the Court upon the record and briefs on file;

On CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, Affirmed.

October 17, 1968

Issued as Mandate: November 8, 1968.

APPENDIX C

26 USC 5604 (a)(1)

Any person who shall—

(1) transport, possess, buy, sell, or transfer any distilled spirits, required to be stamped under the provisions of section 5205(a)(2), unless the immediate container thereof has affixed thereto a stamp as required by such section; * * * shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, for each such offense.

Rule 8(b), Federal Rules of Criminal Procedure

Joinder of Defendants. Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

Rule 14, Federal Rules of Criminal Procedure

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the government to deliver to the court for inspection *in camera* any statements or confessions made by the defendants which the government intends to introduce in evidence at the trial.